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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,402	09/29/2003	Helmut Grollitsch	1523-5	9151
24106	7590	12/19/2007	EXAMINER	
EBBERT LAW OFFICES			HAGEMAN, MARK	
412 MAIN STREET, 7TH FLOOR			ART UNIT	PAPER NUMBER
HOUSTON, TX 77002			3653	
MAIL DATE		DELIVERY MODE		
12/19/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/672,402	GROLLITSCH ET AL.	
	Examiner Mark Hageman	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 December 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 39-42 and 44-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 39-42 and 44-51 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 12-7-2007 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 39-42, 44, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mooij in view of GB 2052765 to Auer. Mooij discloses a frame (figure 1); a conveyor means mounted on said frame (18), said conveyor means for moving the case along said frame (2 figure 1); a first ram means affixed to said frame, said first ram means for applying a force onto a surface of a wall of the case (p2 lines 9+); a second ram means affixed to said frame and positioned in a different location on said frame

from said first ram means, said second ram means for applying a force onto another surface of the case (figure 4), said second ram means comprising a pneumatic ram having a cylinder affixed to said frame and a piston extending outwardly of said cylinder, said piston being movable between a first position and a second position relative to said cylinder, said first position positioning said piston away from said another surface of the case, said second position urging against said another surface of the case (p6 line 12+), said piston having a curved surface positioned at an end of said piston opposite said cylinder (31 and p6 lines 4+; a sensor means (21) cooperative with said ram means, said sensor means for detecting when the surface of the wall of the case has deflected beyond a desired amount; and an ejection means (24, p2 lines 9+, and p5 lines 25+) affixed to said frame and cooperative with said sensor means for ejecting the case directly from said conveyor means when the wall of the case has deflected beyond the desired amount. Mooij does not disclose the rejection means comprising a ram having a cylinder affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom, said piston being movable between a first position and a second position relative to said cylinder, said first position causing said piston to be positioned away from the case on said conveyor means, said second position urging against the case on said conveyor means so as to separate the case from said conveyor means. Auer discloses a transfer means comprising a ram (12) having a cylinder (10) affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom, said piston being movable between a first position and a second position relative to said cylinder, said first position causing said piston to be positioned away from the case on

said conveyor means, said second position urging against the case on said conveyor means so as to separate the case from said conveyor means (p2 lines 13+) for the purpose of displacing an item relative to the conveyor and therefore removing it (p2 lines 18+).

It would have been obvious to one ordinary skill in the art at the time of applicant's invention to have modified Mooij to include the rejection means comprising a ram having a cylinder affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom, said piston being movable between a first position and a second position relative to said cylinder, said first position causing said piston to be positioned away from the case on said conveyor means, said second position urging against the case on said conveyor means so as to separate the case from said conveyor means, as taught by Auer, for the purpose of displacing an item relative to the conveyor and therefore removing it.

-Re claim 40 Mooij further discloses said first ram means comprising: a pneumatic ram (figure 4) having a cylinder (28) affixed to said frame, said pneumatic ram having a piston extending outwardly therefrom; and an arm (25) pivotally connected to said piston and pivotally connected to said frame (fig 4).

-Re claim 41 Mooij discloses said piston being movable between a first position and a second position relative to said cylinder, said first position causing said arm to be positioned away from the wall of the case, said second position urging the wall of the case outwardly (fig 4, p5 lines 31+).

-Re claim 42 Mooij discloses a sensor means connected to said cylinder and

cooperative with said piston, said sensor means for determining when said second position is beyond a desired limit of movement (p6 lines 15+).

-Re claim 44 Mooij discloses a positioning means (17) affixed to said frame, said positioning means for fixing a position of the case relative to said frame.

-Re claim 45 Mooij discloses a separating means (5, 1) affixed to said frame in spaced relation to said positioning means, said separating means for spacing another case from the case on the conveyor means when said positioning means fixed the position of the case.

4. Claims 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0043170 to Mooij in view of US 5,042,233 to Huang. Mooij discloses forming a frame having a conveyor thereon (1 and p4 lines 15+; placing a plurality of cases on said conveyor, each of said plurality of cases having an open side and a closed side with a plurality of walls extending therebetween (2, 16 and p4 lines 16+); moving said plurality of cases in a direction on said conveyor (p4 lines 16+); fixing a position of one of said plurality of cases on said conveyor (p4 lines 26+); applying a force against one of said plurality of walls such that the wall deflects (p3 lines 15+; determining whether the deflection is beyond a desired amount (p3 lines 20+ and p6 lines 15+); and ejecting the case directly from said conveyor when the deflection of the wall is beyond the desired amount (p5 lines 25+). Mooij does not disclose the cases being placed on the conveyor such that an open side thereof faces the conveyor. Huang discloses the cases being placed on the conveyor such that an open side thereof faces the conveyor (abstract) for the purpose of facilitating subsequent filling operations (c1 lines 12+).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have modified Mooij to include the cases being placed on the conveyor such that an open side thereof faces the conveyor, as taught by Huang, for the purpose of facilitating subsequent filling operations.

-Re claim 47 positioning a surface of a ram against the wall of the case; and actuating said ram such that said surface of said ram urges against the wall of the case (p2 lines 9+).

-Re claim 48 sensing an amount of movement of said surface of said ram (p 6 lines 15+).

-Re claim 49 said ram having a pneumatic cylinder mounted in a fixed position, said ram having a piston extending outwardly of said cylinder, said ram having an arm pivotally connected to said piston, said step of actuating the ram comprising: retracting said piston within said cylinder such that said arm pivots outwardly, said arm having said surface thereon urging against the wall (figure 4 and p5 lines 31+).

-Re claim 50 said step of fixing the position comprising: actuating a pneumatic ram such that a piston of the ram extends through said open side and abuts one of said plurality of walls so as to stop a movement of the case relative to said conveyor (figure 4).

-Re claim 51 applying another force against said closed side of said case, such that said closed side deflects; and determining whether the deflection of said closed side is beyond a predetermined limit (p6 lines 12+).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Hageman whose telephone number is (571) 272-3027. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MCH


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